

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

MARQUIS DWON MAJOR,)	
)	
Petitioner,)	
vs.)	NO. CIV-10-0073-HE
)	
MIKE ADDISON, Warden,)	
)	
Respondent.)	

ORDER

Petitioner Marquis Dwon Major, a state prisoner appearing *pro se*, filed this case pursuant to 28 U.S.C. § 2254, seeking habeas relief from his state court convictions. Consistent with 28 U.S.C. § 636(b)(1)(B), the case was referred for initial proceedings to Magistrate Judge Valerie Couch, who recommended that the petition be dismissed as untimely. Petitioner has timely objected to the Report and Recommendation.


Petitioner does not object to the conclusions of the Report and Recommendation apart from its mention of equitable tolling. He asserts that equitable tolling of the limitations period is appropriate in this case.¹ However, as Judge Couch states and petitioner concedes, neither party addressed whether equitable tolling of the relevant limitations period was appropriate, either in the respondent's motion to dismiss, [Doc. #14], or in petitioner's response. [Doc. #16]. "In this circuit, theories raised for the first time in objections to the

¹*Petitioner also claims that his petition was filed on December 31, 2009 (when the petition was given to prison authorities for mailing), rather than on January 25, 2010 (when the Court Clerk file-stamped the petition). The Report and Recommendation explicitly acknowledged petitioner's claim in this regard and noted that it did not affect the timeliness of the filing. [Doc. #17, p.4 n.2].*

magistrate judge's report are deemed waived." United States v. Garfinkle, 261 F.3d 1030, 1031 (10th Cir. 2001). Further, petitioner's suggestion that he would have raised the issue sooner had he known about it is insufficient to justify the extraordinary remedy of equitable tolling. *See* Marsh v. Soares, 223 F.3d 1217, 1220 (10th Cir. 2000) (ignorance of the law, even for an incarcerated pro se prisoner, does not ordinarily warrant equitable tolling). Accordingly, the court adopts Magistrate Judge Couch's Report and Recommendation, and **DISMISSES** the petition as untimely.

IT IS SO ORDERED.

Dated this 25th day of October, 2010.



JOE HEATON
UNITED STATES DISTRICT JUDGE